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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

BEEHIVE TELEPHONE COMPANY, INC.  
BEEHIVE TELEPHONE, INC. NEVADA

Tariff F.C.C. No. 1

To: The Commission

)  
)  
) CC Docket No. 98-108  
)  
)  
) Transmittal No. 11  
)

**PETITION FOR RECONSIDERATION**

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## SUMMARY

Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada (collectively "Beehive") petition for reconsideration of the Commission's December 1, 1998, *Memorandum Opinion and Order* ("Rate Prescription III") prescribing Beehive's access rates.

In less than a year, the Commission has twice ordered substantial reductions in Beehive's access rates. The Commission's cumulative actions have set Beehive's access charges at an unremunerative level. Beehive is projected to run substantial future deficits which will imperil its access to credit markets, hamper its ability to pay dividends, and threaten its continued viability. This situation demands the agency's reasoned response. These three orders fail to employ either a consistent ratemaking methodology, or to find in a reasoned decision that the rates prescribed are just and reasonable. The Commission's use of three disparate methodologies in one year to prescribe unremunerative rates without making the requisite statutory findings raises an issue of arbitrariness, requiring the full and reasoned explanation which the *Rate Prescription III* order wholly lacks.

Preliminarily, the procedural circumstances in which the *Rate Prescription III* order arose presents substantial question of fundamental fairness. A careful reexamination of the relevant facts is necessary because the Commission, by at least one Commissioner's admission, had inadequate time to consider fully the matter. In addition, recent press reports indicate a Congressional report has concluded the staff offered access charge refunds to AT&T Corp. to prevent it from putting line items in customer bills showing increases to finance universal service. If true, this lends credence to the existence of a May 1997 understanding under which AT&T would "pass through" to its long distance customers "access savings" resulting from the Commission's actions in access reform related proceedings. Beehive is troubled by the suggestion that a prior agreement with AT&T influenced the Commission's decision-making process.

The defects in *Rate Prescription III* follow partly from several errors in the Designation Order. Beehive challenges the Bureau's summary rejection there of its revised access rates. LECs are free to file rate revisions at any time. The Commission cannot reject rates summarily on the conclusory ground that they are unlawfully high. Furthermore, the Commission's decision appears tainted by the Designation Order's several mistaken findings of fact. These include inaccurate findings that: (1) Beehive had stated its cost accounts and records had not been maintained in accordance with Part 32; (2) Beehive's cost support for Transmittal No. 11 failed to identify its accounting procedures; and (3) Beehive used an "unauthorized rate of return" in calculating its 1997 rates. Beehive demonstrated -- in some cases repeatedly -- the error of these findings. Yet, its factual refutations have been simply ignored.

The Designation Order also denied Beehive notice of the issues on which the Commission based its *Rate Prescription III* order, and thus gave Beehive no meaningful opportunity to be heard on those issues. The Bureau did not explicitly designate any issue for resolution in this proceeding. Rather, it directed Beehive to comply with rule section 61.39(a) by explaining "all the apparent inconsistencies and irregularities" that were allegedly "detailed" in the order. In response to Beehive's request that the Bureau clarify exactly what "inconsistencies and irregularities" it needed to explain, the Bureau informed Beehive that it must explain: (1) why the staff's tentative conclusion that it had merely moved substantial amounts of its expenses from Utah to Nevada and from corporate operations and plant specific accounting categories to customer operations expense accounts was incorrect; (2) why Transmittal No. 11 reported a 26% increase in interstate net plant from that reported in Transmittal No. 8; and (3) how it calculated its proposed switched transport facility rates, tandem switched transport termination rates, and transport interconnection charge rates.

Beehive's Direct Case, *inter alia*, provided evidence on the Bureau's three specified issues. Rather than addressing that evidence, or accepting Beehive's explanations, the Commission ignored the Bureau's issues, and instead announced conclusions on issues *the Bureau never put in controversy*. The lack of adequate notice clearly led to the Commission's erroneous conclusions in *Rate Prescription III*. Although, the Commission concluded Beehive's cost evidence failed to justify its proposed transport rates, Beehive had only to show at hearing that its proposed rates were "just and reasonable." Absent notice the Commission was specifically inquiring into the matter, Beehive did not specifically have to cost "justify" its transport rates to prove they were "just and reasonable."

To carry its burden of persuasion, Beehive had to make the required explanations and show by a preponderance of evidence that its explanations were true. Beehive did so. It explained that expenses had been either reassigned to Beehive Nevada on the basis of access lines or direct labor, or reclassified by its accountant in accordance with *Rate Prescription II*. Beehive showed the 26% increase in interstate net plant resulted from the erroneous (now corrected) use of the weighted DEM allocator, and the installation of a fiber link to Elko, Nevada. Finally, Beehive explained the methodology it employed to calculate its transport rates using 1996 and 1997 data, and identified the cost support document that detailed the access minutes used in the rate development.

No evidence was produced showing Beehive's explanations to be incorrect or untruthful. Having taken evidence and heard argument on the Bureau's issues, the Commission cannot simply decline to resolve the issues. Although the Bureau demanded explanations going to the alleged "inconsistencies and irregularities" in Beehive's 1996 cost support and to Beehive's calculation of its transport rates, and the parties developed a record on those issues, the Commission did not resolve them. Rather, it made conclusory statements about the reliability of Beehive's cost support

generally, and used those findings as a springboard to set unremunerative rates having no relation to any finding of Beehive's actual costs.

To prescribe a rate, the Commission must make a valid finding that the rate is "just and reasonable." It did not do so here. Moreover, the Commission must conduct a reasonable balancing, based on factual findings, of the investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged non-exploitative rates. It did not do that either. Nor were the recitation of conclusions in *Rate Prescription III* accompanied by any articulation of the standards the Commission employed to reach its conclusions. And, even assuming its "findings" were valid, the Commission articulated no rational connection between its findings (that Beehive's proposed rates were unexplained, unjustified, and improperly calculated) and its choice of the NECA transport rates to prescribe.

To remedy its errors on reconsideration, the Commission, inter alia, must weigh Beehive's financial condition. As a result of the refund order Beehive projects a 1998 net loss of approximately \$980,000. This follows a 1997 loss of just over \$360,000. Beehive projects the Commission's prescribed rates will produce a loss in 1999 exceeding \$1.294 million. With such sustained losses, Beehive's access to capital markets will be foreclosed; it will be unable to pay dividends; and its financial integrity will be jeopardized.

Finally, the Commission held against Beehive in *Rate Prescription II* in part because of its alleged unexplained costs associated with JEI, and its unjustified legal expenses. Beehive here explained in detail its JEI expenses, and justified its legal expenses. That explanation and justification went unnoticed in *Rate Prescription III*. The Commission simply decried without explanation or analysis that Beehive's costs to stimulate traffic was not an "allowable marketing expense." Such backhanded treatment of serious issues is inconsistent with reasoned decisionmaking.

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**PETITION FOR RECONSIDERATION**

Beehive Telephone Company, Inc. ("Beehive Utah") and Beehive Telephone, Inc. Nevada ("Beehive Nevada"), by their attorney, and pursuant to section 405(a) of the Communications Act of 1934, as amended ("Act"), hereby petition the Commission to reconsider its *Memorandum Opinion and Order*, FCC 98-320, 1998 WL 827399 (Dec. 1, 1998) ("*Rate Prescription III*") in the above-captioned proceeding. As parties to the proceeding, Beehive Utah and Beehive Nevada (collectively "Beehive") have standing to seek reconsideration. See 47 U.S.C. § 405(a).

**INTRODUCTION**

In less than a year, the Commission issued three orders prescribing access rates that Beehive must charge.<sup>1/</sup> Rate reductions of 52%, 66% and 51% were prescribed. The Commission employed three different ratemaking methodologies to calculate the three rate reductions.

In January 1998, the Commission disallowed Beehive's operating expenses in excess of 25% of its total plant in service ("TPIS"). See *Rate Prescription I*, 13 FCC Rcd at 2742. In June 1998,

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<sup>1/</sup> See *Rate Prescription III* at 9. See also *Beehive Tel. Co., Inc.*, 13 FCC Rcd 2736, 2745, *reconsid. denied* 13 FCC Rcd 11795 (1998) ("*Rate Prescription I*"), *petition for review filed*, *Beehive Tel. Co., Inc. v. FCC*, No. 98-1293 (D.C. Cir. June 30, 1998); *Beehive Tel. Co., Inc.*, 13 FCC Rcd 12275, *reconsid. denied*, 13 FCC Rcd 19396 (1998) ("*Rate Prescription II*"), *petition for review filed*, *Beehive Tel. Co., Inc. v. FCC*, No. 98-1467 (D.C. Cir. Oct. 6, 1998).

it computed Beehive's interstate revenue requirement based on the average TPIS and net investment of a small sample of allegedly comparable telephone companies. *See Rate Prescription II*, 13 FCC Rcd at 12285. Then, in December 1998, the Commission simply ordered Beehive to use NECA's premium transport rates in effect on July 1, 1998. *See Rate Prescription III at 9.*

The Commission's use of three disparate methodologies in one year to prescribe rates for Beehive is enough to raise a question of arbitrariness. But it is merely one example of the arbitrary treatment Beehive received from the Commission in 1998. That treatment warrants, at the very least, the full explanation required by the dictates of reasoned decisionmaking.

The Commission must not deny reconsideration without explanation, as it did in *Rate Prescription II*. *See* 13 FCC Rcd at 19396. The Commission's cumulative actions have set Beehive's access charges at an unremunerative level. Beehive is projected to run substantial future deficits which will imperil its access to credit markets, hamper its ability to pay dividends, and threaten its continued financial integrity. This situation demands the agency's reasoned response.

Moreover, a careful reexamination of the relevant facts is necessary in part because the Commissioners were given inadequate time to consider fully the matter in the first instance. *See Rate Prescription III at 11* (Furchtgott-Roth, Comm'r, concurring). However, recent press reports compound the need for a reasoned disposition of this petition.

The press recently reported that House Commerce Committee investigators concluded that the Commission's staff was willing to make a "payoff" to AT&T Corp. ("AT&T") to prevent it from putting line items in customer bills showing increases to finance universal service. *Hill Report Finds FCC Threats, Political Acts Against AT&T and MCI*, COMMUNICATIONS DAILY, Nov. 30, 1998, at 2. The congressional investigators apparently found documentary evidence revealing the staff's



willingness “to pay off AT&T . . . by refunding approximately \$100 - \$150 million” in access charges.

*Id.* If these reports are accurate, they would lend credence to allegations of the existence of a May 1997 agreement under which AT&T would “pass through” to its long distance customers “access savings” resulting from the Commission’s actions in “access reform related proceedings.”<sup>2/</sup>

Having been ordered now three times to refund access charges to AT&T, Beehive is troubled even by the mere possibility that a prior agreement with AT&T influenced the Commission’s decision-making in this case. And the Commission’s inexplicable treatment of Beehive works to reinforce the appearance of bias. *See generally WLOS TV, Inc. v. FCC*, 952 F.2d 993, 998 (D.C. Cir. 1991) (Silberman, J., concurring). The Commission should dispel that appearance by providing a reasoned decision on the merits of this petition. *See generally Columbia Broadcasting System, Inc. v. FCC*, 454 F.2d 1018, 1027 (D.C. Cir. 1971).

### ARGUMENT

#### I. The Commission Must Act On Beehive’s Application For Review

The Bureau summarily rejected Beehive’s revised local switching rates as “patently unlawful” because the rates were “significantly higher” than those prescribed in *Rate Prescription II. Beehive Tel. Co., Inc.*, 13 FCC Rcd 12647, 12649 (1998) (“*Suspension Order*”). Beehive appealed that interlocutory ruling<sup>3/</sup> and subsequently urged the Commission to act on the appeal when it concluded

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<sup>2/</sup> See Initial Brief for Local Exchange Carrier Petitioners, *United States Tel. Ass’n v. FCC*, No. 97-1469, at 7-9, Adden. A (D.C. Cir. Apr. 30, 1998). See also *Proposed Revision of 1998 Collection Amounts for Schools and Libraries and Rural Health Care Universal Service Support Mechanisms*, 13 FCC Rcd 9448, 9460 (Com. Car. Bur. 1998) (separate statement of Comm’r Tristani).

<sup>3/</sup> See Application for Review, CC Docket No. 98-108, (July 30, 1998) (“Application”). Beehive’s unopposed Application is incorporated herein by this reference.

its investigation in this case.<sup>4/</sup> However, the Commission did not address the matter.

Beehive challenged the Bureau's authority to reject rate revisions simply because they were higher than the rates previously prescribed by the Commission. *See* Application at 5-8. Beehive also asked the Commission to correct two erroneous findings pertaining to Beehive's alleged non-compliance with Part 32 of the Commission's rules ("Rules"). *See* Application at 3-5.

The Commission could reasonably conclude that the issues Beehive raised were not collateral and therefore not ripe for review prior to the issuance of the order concluding this investigation. *See Investigation of Special Access Tariffs of Local Exchange Carriers*, 12 FCC Rcd 7026, 7134-35 (1997). However, there was no reason for the Commission to sever consideration of Beehive's challenge to the *Suspension Order* from its decision on the merits of the investigation altogether. That bifurcates the review process which is wholly inconsistent with the policy against piecemeal appeals that underlies the finality rule. The Commission should decide these issues now.<sup>5/</sup>

A. The Bureau Erred By Rejecting Beehive's Rates

Beehive has already shown that its revised local switching rates were unlawfully rejected by the Bureau. *See* Application at 5-8. LECs are free to file rate revisions "at any time," *Annual 1990 Access Tariff Filings*, 5 FCC Rcd 4177, 4236 (Com. Car. Bur. 1990), and the Commission cannot "reject rates summarily on the ground that they are unlawfully high." *Associated Press v. FCC*, 448 F.2d 1095, 1104 (D.C. Cir. 1971).

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<sup>4/</sup> *See* Motion to Consolidate, CC Docket No. 98-108, at 3 (Nov. 12, 1998).

<sup>5/</sup> Since the Commission had the "opportunity to pass" on the issues, Beehive could have sought judicial review of both *Rate Prescription III* and the *Suspension Order*. *See* 47 U.S.C. § 405(a). Prudence, however, dictates that the Commission be given another opportunity to correct the errors in the *Suspension Order*. *See Time Warner v. FCC*, 144 F.3d 75, 81 n.7 (D.C. Cir. 1998).

Since the Commission did not reach the issue, the Bureau apparently felt free to repeat its error by rejecting Beehive's rate revisions. *See Beehive Tel. Co., Inc.*, DA 98-2583 (Com. Car. Bur. Dec. 22, 1998) (rejecting in part Beehive's Transmittal No. 14). That unlawful practice apparently will continue until the *Suspension Order* is reviewed and overruled.

B. The Bureau Made Erroneous Findings

The Commission should correct the Bureau's claim that "Beehive had stated in its direct case for Transmittal No. 8 that its cost accounts and records had not been maintained in accordance with part 32." *Suspension Order*, 13 FCC Rcd at 12648. *See also Rate Prescription II*, 13 FCC Rcd at 12281. Beehive has documented the clear error of that claim in two Commission proceedings,<sup>6/</sup> and will so again in its *Rate Prescription II* appeal before the D.C. Circuit Court of Appeals. The Commission should forthrightly admit the Bureau's error or defend the Bureau's finding

The Bureau also erred when it found that "Beehive's cost support for Transmittal No. 11 fails to identify the accounting procedures it used to maintain its books." *Id.* at 12650. Beehive showed that its cost support included the reports of its auditor, McNeil Duncan, C.P.A., confirming that its accounting records were maintained in accordance with Part 32. *See Application* at 4. The Commission should recognize that Beehive identified the accounting procedures it used.

II. Beehive Calculated Its 1997 Rates  
Using The Authorized Rate Of Return

*Rate Prescription I* included the erroneous finding that Beehive used an "unauthorized rate of return" in calculating its 1997 rates. 13 FCC Rcd at 2742. Beehive asked the Commission to

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<sup>6/</sup> *See Application* at 4; *Petition for Reconsideration*, CC Docket No. 97-249, at 15 (June 30, 1998).

correct that finding.<sup>7/</sup> Not only was that request disregarded, but the error was repeated in three more orders, including the Bureau's designation order in this case. *See Rate Prescription I*, 13 FCC Rcd at 11796; *Beehive Tel. Co., Inc.*, 13 FCC Rcd 5142, 5143 (Com. Car. Bur. 1998); *Beehive Tel. Co., Inc.*, DA 98-2030, 1998 WL 695459, at \*4 (Com. Car. Bur. Oct. 7, 1998) ("*Designation Order*").

The record shows that Beehive based its 1997 rates on the prescribed 11.25% rate of return. After Beehive established that fact before the D.C. Circuit,<sup>8/</sup> the Commission's appellate counsel wisely made no attempt to defend the Commission's baseless "finding" that Beehive used an unauthorized rate of return.<sup>9/</sup>

That an incorrect and prejudicial finding has been repeated in Commission or Bureau orders three times over Beehive's objection suggests that Beehive's papers are not being read or that its arguments are simply being ignored. In either case, it does little to instill confidence in the Commission's decision-making. The Commission ought to either acknowledge that Beehive used the correct rate of return in 1997 or set out the factual basis for concluding to the contrary.

III. The Bureau Did Not Provide  
Reasonable Notice Of The Issues

By requiring "reasonable notice" and a "full hearing," section 204(a)(1) of the Act triggers basic requirements of fairness and notice, including "specificity of notice and opportunity to respond." *Hess & Clark, Div. Of Rhodia, Inc. v. FDA*, 495 F. 2d 975, 984 (D.C. Cir. 1974). Notice is sufficient "as long as a party to an administrative proceeding is reasonably apprised of the issues in the

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<sup>7/</sup> See Petition for Reconsideration, CC docket No. 97-237, at 22 (Feb. 5, 1998).

<sup>8/</sup> See Brief for Petitioners at 38-39, *Beehive* (D.C. Cir. No. 98-1293).

<sup>9/</sup> See Brief for Respondents at 22-26, *Beehive* (D.C. Cir. No. 98-1293).

controversy, and is not misled.” *Wyoming v. Alexander*, 971 F.2d 531, 542 (10th Cir. 1992) (quoting *Savina Home Indus., Inc. v. Secretary of Labor*, 594 F.2d 1358, 1365 (10th Cir. 1979)) (emphasis deleted). The *Designation Order* in this case was misleading, because it did not foretell the issues the Commission actually addressed in *Rate Prescription III*.

The Bureau did not explicitly designate any issue for resolution. *Compare Beehive Tel. Co., Inc.*, 12 FCC Rcd 20249, 20251 Com. Car. Bur. 1997). Rather, the Bureau directed Beehive to comply with section 61.39(a) of the Rules by explaining “all the apparent inconsistencies and irregularities” that were allegedly “detailed” in the order. *Designation Order* at 5.

Beehive read the *Designation Order* to refer to “inconsistencies” between the 1996 cost support filed with Transmittal No. 11 and the 1996 cost support filed with Transmittal No. 8. It also assumed that the Bureau was referring to the “irregularities” alleged in *Rate Prescription II*. See 13 FCC Rcd at 12281-84. But to be sure of its burden of proof, Beehive promptly asked the Bureau to clarify exactly what “inconsistencies and irregularities” must be explained.<sup>10/</sup>

Two days before Beehive’s direct case deadline, the Bureau informed Beehive that it must explain: (1) why the staff’s tentative conclusion that it had merely moved substantial amounts of its expenses from Utah to Nevada and from corporate operations and plant specific accounting categories to customer operations expense accounts was incorrect; (2) why it reported a 26% increase in interstate net plant in Transmittal No. 11 as compared with the plant reported in Transmittal No. 8; and (3) how it calculated its proposed switched transport facility rates, tandem switched transport

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<sup>10/</sup> See Letter of Russell D. Lukas to Jane E. Jackson, at 2 (Oct. 8, 1998) (“Beehive Letter”).

termination rates, and transport interconnection charge (“TIC”) rates.<sup>11/</sup> Thus, Beehive concluded it faced these three specific issues that required explanations. AT&T shared that view of the issues.<sup>12/</sup>

Beehive clearly carried its burden of producing evidence on the three issues the Bureau articulated. *See Rate Prescription III* at 5-7. Rather than addressing that evidence, or accepting Beehive’s explanations as true, the Commission opted to ignore the Bureau’s issues. It never decided whether Beehive adequately explained: (1) why the staff’s conclusion that Beehive “merely moved” expenses was incorrect, *Designation Order* at 4; (2) why a 26% increase in interstate plant had been reported; or (3) how the proposed rates were calculated. Instead, the Commission announced conclusions on issues the Bureau never put in controversy.

The Commission held that Beehive’s cost to lease switching equipment from Joy Enterprises, Inc. (“JEI”), that is used in part to stimulate traffic, “is not an allowable marketing expense.” *Rate Prescription III* at 8. It also decided that Beehive “improperly calculated its investment costs resulting in a shift of investment costs from the state to the interstate jurisdiction.” *Id.* Neither issue was “in the faintest way foreshadowed” in the *Designation Order*. *Southwestern Bell Tel. Co. v. FCC*, 28 F.3d 165, 172 (D.C. Cir. 1994). The Bureau never mentioned JEI, the JEI lease expenses, or Beehive’s separations procedures in its *Designation Order*.

Beehive was not “reasonably appraised” that the Commission would decide whether the JEI expenses were allowable marketing expenses or whether its investment costs were properly calculated. Thus, it was unreasonable and a denial of due process for the Commission to decide that Beehive failed to meet a burden of proof with respect to issues it did not know were in the case.

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<sup>11/</sup> See Letter of Jane E. Jackson to Russell D. Lukas at 2 (Oct. 19, 1998) (“Bureau Letter”).

<sup>12/</sup> See AT&T Opposition to Direct Case, CC Docket No. 98-108, at 3 (Oct. 30, 1998).

IV. Beehive Carried Its Burden Of Persuasion  
On The Issues Designated By The Bureau

The Commission concluded that Beehive's "cost evidence fails to justify" its proposed transport rates. *Rate Prescription III* at 8. It expressly held that Beehive failed to meet its burden of proof under section 204(a)(1) of the Act to "justify" its rates. *Id.* at 1. But section 204(a)(1) would only impose the burden of proof on Beehive to show at hearing that its proposed rates were "just and reasonable." 47 U.S.C. § 204(a)(1). In this case, Beehive did not have to cost "justify" its transport rates to prove that they were "just and reasonable."

The Commission takes the position that "a tariff investigation is not an adjudication." *Rate Prescription I*, 13 FCC Rcd at 11806. It claims that a tariff investigation is a "rulemaking of particular applicability" under the APA. *Id.* Consequently, the Commission's use of a burden of proof in this proceeding is "problematic" because the concept is developed in an "adjudicative, factfinding context." *American Trucking Ass'n, Inc. v. United States*, 688 F.2d 1337, 1343 n.8 (11th Cir. 1982). Indeed, the requirement of section 7(c) of the APA that a proponent of a rule have the burden of proof applies to trial-type hearings, not rulemakings. *See* 5 U.S.C. § 556(d); *American Trucking Ass'n v. United States*, 344 U.S. 298, 318-20 (1952).

Assuming that the meaning of "burden of proof" in section 204(a)(1) of the Act and section 7(c) of the APA is the same, Beehive carried "the burden of persuasion – the notion that if the evidence is evenly balanced, the party that bears the burden of persuasion must lose." *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 272(1994). Thus, Beehive had to show by a preponderance of the evidence that its proposed rates were "just and reasonable." But the burden of proof did not determine what facts Beehive had to prove as a substantive part of its claim that its rates are just and reasonable. *See Metropolitan Stevedore Co.*

v. *Rambo*, 117 U.S. 1953, 1963 n.9 (1997). That was determined by the *Designation Order*.

The Bureau required Beehive to comply with section 61.39(b) of the Rules “by providing an explanation of all the apparent inconsistencies and irregularities detailed [in paragraph 10].” *Designation Order* at 5. It also made Beehive “explain how it calculated” its transport rates. *Id.* The Bureau explicitly confirmed the materiality of the information sought by stating that the information was “necessary to determine whether the proposed rates are just and reasonable.” *Designation Order* at 5. Accordingly, to carry its burden of persuasion, Beehive had to make the required explanations and show by a preponderance of evidence that its explanations were true.

To show that it had not “merely moved” substantial expenses from Utah to Nevada and between different expense accounts, *Designation Order* at 4, Beehive explained that expenses had been either reassigned to Beehive Nevada on the basis of access lines or direct labor, or reclassified by Mr. Duncan in accordance with *Rate Prescription II*. See Direct Case at 19-24. Beehive showed that the 26% increase in interstate net plant resulted from the erroneous (now corrected) use of the weighted DEM allocator, see *id.* at 24, and the installation of a fiber link to Elko, Nevada that cost \$626,571. See Rebuttals, CC Docket No. 98-108, at 4, Attach. 2 (Nov. 6, 1998). Finally, Beehive explained the methodology it employed to calculate its transport rates using 1996 and 1997 data, and it pointed the Commission to the cost support document that detailed the access minutes used in the rate development. See Direct Case at 25.

In carrying its burden of persuasion, Beehive was aided by the rule that “good faith is to be presumed on the part of the managers of a [carrier].” *Mountain States Tel. & Tel., Co. v. FCC*, 930 F.2d 1035, 1034 (D.C. Cir. 1991) (quoting *West Ohio Gas Co. v. Public Utils. Comm’n*, 294 U.S. 63, 72 (1935)). The effect of that presumption was to impose on AT&T “the burden of going forward



with evidence to rebut or meet the presumption” of Beehive’s good faith. Fed. R. Evid. 301. *See Panduit Corp. v. All States Plastic Manufacturing Co., Inc.*, 744 F.2d 1564, 1579 (Fed. Cir. 1984). AT&T produced no such evidence, *see* AT&T Opposition at 5-8, and the Commission found none. *See Rate Prescription III* at 7-9. Consequently, the Commission had to take Beehive’s explanations as proffered in good faith, or at least explain why it chose not to do so.

AT&T produced no evidence that Beehive’s three explanations were incorrect or untruthful. It merely raised questions about the explanations, *see* AT&T Opposition at 4-7, which Beehive answered. *See* Rebuttals at 2-5. Thus, there was no evidence to rebut Beehive’s explanations. That required the Commission to conclude that Beehive carried its burden of persuasion with respect to the specific explanations called for by the *Designation Order*. Therefore, the Commission could not use the burden of proof in this case as a “magic wand that frees [it] from the responsibility of reasoned decision-making.” *Southwestern Bell*, 28 F.3d at 172 (quoting *Kansas Gas & Elec. Co. v. FERC*, 758 F.2d 713, 721 (D.C. Cir. 1985)).

V.     The Commission Failed To Resolve  
        The Issues Designated For Investigation

Having taken evidence and heard argument on the Bureau’s issues, the Commission “cannot simply decline to resolve [the] issue[s], after it holds a hearing.” *MCI Telecomms. Corp. v. FCC*, 917 F.2d 30, 41 (D.C. Cir. 1990). But that is what happened in this proceeding.

This “hearing” was held to resolve the “substantial questions of lawfulness” that were raised by the fact that Beehive’s local transport rates were allegedly based in part on 1996 cost and investment data that had been “previously rejected” in *Rate Prescription II. Suspension Order*, 13 FCC Rcd at 12650. The Bureau demanded explanations going to the alleged “inconsistencies and irregularities” in Beehive’s 1996 cost support and to Beehive’s calculation of its transport rates.

*Designation Order* at 5. The parties developed a record on those issues. However, the Commission did not resolve: (1) whether the staff was incorrect in concluding that Beehive “merely moved” substantial expenses between states and expense accounts; (2) why Beehive reported a 26% increase in interstate net plant; or (3) how it calculated its transport rates. *See supra* p. 8.

As an adjudicator, the Commission had the obligation to answer the questions the Bureau raised. *See American Tel. & Tel. Co. v. FCC*, 978 F.2d 727, 732 (D.C. Cir. 1992), *cert. denied*, 509 U.S. 913 (1993). The Commission failed in that duty. Instead of resolving the three specific issues the Bureau set for investigation, the Commission made conclusory statements about the reliability of Beehive’s cost support generally. *See Rate Prescription III* at 7-9. The Commission should remedy that error by making particularized findings of fact on the Bureau’s specific issues.

VI. No Substantial Record Evidence  
Supports The Commission’s “Findings”

Beehive recognizes that the Commission has substantial discretion in ratemaking cases. The exercise of that discretion, however, must be “based on factual findings,” *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168, 1181-82 (D.C. Cir. 1987) (*en banc*), “supported by substantial record evidence.” *Nader v. FCC*, 520 F.2d 182, 192 (D.C. Cir. 1975). Instead of making factual findings based on substantial evidence, the Commission based its ratesetting in this case on bare conclusions or conjecture relating to matters not placed in issue.<sup>13/</sup> The most egregious example

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<sup>13/</sup> The Commission simply announced without any explanation that: (1) Beehive’s cost evidence “fails to justify” its rates; (2) its leased equipment is not used “to provide service to access customers;” (3) its tandem switching equipment costs were “improperly calculated;” (4) it did not show how “costs were used in calculating its revised rates;” (5) it apparently has an “ongoing practice of failing to explain its justification for use of various data” in rate development; (6) its “unreliable” cost support data cannot be used to prescribe rates; (7) its data is “often unexplained and confusing;” and (8) it provided “no indication of what historical demand for tandem switch related  
(continued...)

of the former appears in the margin of *Reconsideration III*:

[R]egarding the shifting of expense between companies, Beehive attempts to explain that cost shifts between companies somehow result from allocations of joint costs, but its explanation is vague and unsupported by any facts. Beehive either failed to research the cause of the difference and is unaware of the specific causes, or is unwilling to reveal the exact nature of the differences to the Commission. The provides additional evidence of Beehive's inconsistent and irregular accounting and cost allocation practices.<sup>14/</sup>

At the risk of belaboring the point, Beehive was not required under the *Designation Order* to explain "cost shifts between companies." Beehive was to address the staff's tentative conclusion that the "*substantial* irregularities and *significant* amounts of questionable expenses noted in Transmittal No. 8 seem merely to have been moved from one expense account to another." *Designation Order* at 4 (citing *Rate Prescription II*, 13 FCC Rcd at 12281-82) (emphasis added). See Bureau Letter at 2. Beehive was not directed to explain the "specific cause" and "exact nature" of every single audit adjustment Mr. Duncan made to correct errors in Beehive's expense accounts.

Beehive pointed out that the "inconsistent, questionable, and unexplained entries" the Commission allegedly found in Transmittal No. 8 were in "Beehive Utah's general ledger for 1995." Direct Case at 20 (quoting *Rate Prescription II*, 13 FCC Rcd at 12281, 12282 n.46). Beehive explained that those alleged irregularities and questionable expenses obviously were not included in the 1996 and 1997 cost support for Transmittal No. 11. See *id.* at 20.

Beehive demonstrated that the staff was incorrect by showing that no "substantial amounts of expenses" were moved to Nevada (Beehive Utah's expenses in 1996 decreased by \$173,409 while

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<sup>13/</sup>(...continued)

charges" was used to calculate rates. *Rate Prescription III* at 8-9. Those pronouncements were unexplained, unsupported, and irrelevant to the issues the Bureau set for determination.

<sup>14/</sup> *Rate Prescription III* at 8 n.49.

Beehive Nevada's costs only increased by \$40,969). *See id.* at 20-21. The only substantial expense that was reclassified by Beehive's auditor was the JEI expense (\$1,008,000) and that expense did not "move" from Beehive Utah. *See id.* at 21-22. Beehive explained exactly why Mr. Duncan reclassified the JEI expense as a Beehive Utah customer operations (marketing) expense. *See id.*

Beehive only addressed why expenses were adjusted "between companies" to substantiate that it had not merely moved expenses "from Utah to Nevada." Its explanation was neither "vague" nor "unsupported" by facts. Beehive provided the Commission with every audit adjustment Mr. Duncan made to correct errors in Beehive's expense accounts. *See* Rebuttals at Attach. A. Beehive did not reveal the "exact nature" of every adjustment, because it only carried the burden of showing that the staff's initial assumption was incorrect and that the entries questioned in *Rate Prescription II* had not just been moved from one account to another. Beehive met that burden by establishing that the questionable 1995 ledger entries were not reflected in its 1996 and 1997 data, and that its independent auditor adjusted its 1996 accounts in response to *Rate Prescription II*.

The Commission's conjecture that Beehive either "failed to research" or was "unwilling to reveal" the exact nature of the difference in the 1996 expense levels is unwarranted and unseemly. Beehive obviously researched the differences in the 1996 expenses reported in Transmittal Nos. 8 and 11, because they were detailed for the Commission. *See* Direct Case at 21; Rebuttals at Attach. 1. Beehive spelled out the exact nature of the only significant difference in its expense levels. *See* Direct Case at 21-22. Again, the nature of every adjustment in Beehive's 1996 accounts was not relevant to the issues framed by the Bureau. If it wanted Beehive to discuss the exact nature of every change however insubstantial, the Bureau had the obligation to state that directive "in plain and comprehensible English." *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1353 (D.C. Cir. 1993).

Finding that Mr. Duncan “apparently determined that the equipment leased from JEI was not used by Beehive as telecommunications plant,” the Commission concluded that the equipment was not used by Beehive “to provide access service to customers.” *Rate Prescription III* at 8. No evidence supports the Commission’s inference as to what Mr. Duncan “apparently determined.” His opinion that the JEI lease cost should be reclassified to Account 6610 because the equipment is used to stimulate traffic, *see* Direct Case at 22, does not mean that the equipment is not also used as telecommunications plant. In fact it is. Moreover, the accounting treatment of the expense is not evidence that the equipment is not used to provide access service to Beehive’s customers. It is undisputed that Beehive leases switching equipment from JEI and that the equipment is in use at four of Beehive’s exchanges. *See id.* at 11-12. The equipment is used to terminate the traffic of Beehive’s interexchange carrier customers. It is thus a legitimate expense item.

Equally baseless is the Commission’s finding that Beehive “improperly calculated its investment costs resulting in a shift of investment costs . . . to the interstate jurisdiction.” *Rate Prescription III* at 8. Beehive corrected the error in the allocation of its local switching equipment - category 3 - costs. *See* Direct Case at 24. However, the Commission erroneously assumed that Beehive made the same mistake in allocating its tandem switching equipment - category 2 - costs. *See Rate Prescription III* at 8 & n.48. As its cost documents show, Beehive complied with section 36.124 of the Rules by allocating its tandem switching equipment costs using a category 2 factor based on relative minutes of use. Thus, Beehive did not “overstate” its investment or its switch-related interstate expenses. *Rate Prescription III* at 8.

Contrary to the Commission’s finding, Beehive showed how “costs were used in calculating its revised rates.” *Id.* With its Direct Case, Beehive gave the Commission all the workpapers that

supported its correct rates, including the workpapers showing the rate development.<sup>15/</sup>

VII. The Commission Did Not Engage  
In Reasoned Decisionmaking

That this is a rate case does not relieve the Commission of its obligation to engage in reasoned decisionmaking. It still must “consider the relevant factors” and articulate a “rational connection between the facts found and the choice made.” *Nader*, 520 F.2d at 192 (quoting *Bowman Transport, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285 (1974)). Neither was done here.

A. The Rate Prescription Was Invalid

The Commission’s authority to prescribe rates is not unlimited. *American Tel. & Tel. Co. v. FCC*, 449 F.2 439, 450 (2d Cir. 1971). To prescribe a rate, the Commission must make a “valid” finding that the rate is “just and reasonable.” *Id.* See 47 U.S.C. § 205(a). That is the “essential statutory finding.” *American Tel. & Tel.*, 449 F.2d at 450. In this case, however, the Commission did not explicitly make the requisite finding that the prescribed NECA transport rates will be just and reasonable. That was clear error. See *id.* at 451. Moreover, the Commission failed to make the findings of fact necessary to produce this essential statutory (and constitutional) determination.

To prescribe a rate, the Commission must conduct “a reasonable balancing, based on factual findings, of the investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged non-exploitative rates.” *Jersey Central*, 810 F.2d at 1177-78. It cannot rely on its “judgement and expertise” to arrive at a rate. *Nader*, 520 F.2d at 192-93. It must base its rate prescription on the reasoned consideration of the facts of the case as shown by substantial evidence. See *id.* And when faced with a serious allegation that a rate reduction will jeopardize the

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<sup>15/</sup> See Letter of Pamela Gaary to Magalie Roman Salas (Oct. 23, 1998) (transmitting revised workpapers).

carrier's financial integrity, the Commission must consider the financial status of the carrier and make findings of fact as to the consequences of a rate prescription. *See Jersey Central*, 810 F.2d at 1181-82. None of that was done in this case despite Beehive's showing that it was already operating at a loss.

The Commission did not engage in factfinding; it merely stated conclusions. *See supra* note 13. Moreover, reasoned decisionmaking requires the "conjunction of articulated standards and reflective findings." *Greater Boston TV Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971). The recitation of conclusions in *Rate Prescription III* was not accompanied by an articulation of the standards the Commission employed to reach its conclusions. That omission is significant, because Beehive provided the information called for by the *Designation Order* and section 61.39 of the Rules.

Section 61.39(b) provides that the material submitted with a proposed rate change "must include an explanation of the filing in the transmittal as required by §61.33." 47 C.F.R. § 61.39(b). Section 61.33(a) only requires that the carrier "concisely explain the nature and purpose of the filing." 47 C.F.R. § 61.33(a). There is no other rule or reported precedent that sets forth what "explanations" are "necessary" for a small LEC to make "to support a proposed set of access rates" filed under section 61.39(b). *Rate Prescription III* at 9. And no "reasonably comprehensible" standard, *Southwestern Bell Tel. Co. v. FCC*, 10 F.3d 892, 896 (D.C. Cir. 1993), is provided by the Commission's prior "admonitions and findings." *Rate Prescription III* at 9.

Even assuming its findings were valid, the Commission articulated no rational connection between its findings (that Beehive's proposed rates were unexplained, unjustified, and improperly calculated) and its choice of the NECA transport rates to prescribe. To make such a connection, the

Commission first had to consider Beehive's revised (and properly calculated) rate proposal as a reasonable, cost-based alternative to the NECA rates. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 46-49 (1983). If it rejected that alternative, the Commission then had to reasonably determine, based on findings, that the NECA rate prescription will allow Beehive to maintain its "general financial integrity" and its "ability to pay dividends" without exploiting its IXC customers. *Jersey Central*, 810 F.2d at 1180-80. The Commission obviously did not conduct the requisite balancing. It prescribed the NECA rates by fiat.

Beehive asks that its financial condition be weighed by the Commission when it reconsiders its latest rate prescription. Through November 30, 1998, Beehive's operations resulted in a net loss in 1998 of nearly \$160,000. *See infra* Exhibit 1. Considering the Commission's refund order, Beehive estimates that it will suffer a loss of about \$980,000 for the year 1998 (which followed a 1997 loss of just over \$360,000). *See infra* Exhibit 2 at 2. Beehive projects that the Commission's prescribed rates will produce losses in 1999 that will exceed \$1.294 million. *See id.* With such sustained losses, Beehive's access to capital markets will be foreclosed; it will be unable to pay dividends; and its financial integrity will be jeopardized. *See id.* at 3. The Commission must consider these factors. *See Jersey Central*, 810 F.2d at 1180.

B. The Refund Order Was Unjustified

Section 204(a)(1) of the Act provides that the Commission "may" order a carrier to refund an unjustified charge. *See* 47 U.S.C. § 204(a)(1). Because the section 204(a) refund remedy is "couched in permissive terms," *MCITelecomms. Corp. v. FCC*, 59 F.3d 1407, 1414 (D.C. Cir. 1995), the Commission must consider all relevant factors before it exercises its discretion to order a refund. *See Virgin Island Tel. Corp. v. FCC*, 989 F.2d 1231, 1239-40 (D.C. Cir. 1993). Those factors



include: (1) whether the carrier's projections were reasonable when made; (2) the actual harm suffered by ratepayers; (3) changes in the market environment; and (4) overriding equitable considerations. *See id.* at 1240. In this case, the Commission gave no apparent consideration to any factor before ordering Beehive to make refunds. *See Rate Prescription III* at 9.

After reports of an alleged deal with AT&T involving access charge refunds, *see supra* pp. 2-3, the Commission should reassess its refund order taking care to consider and accommodate the relevant factors. To that end, the Commission ought to weigh Beehive's current financial condition, and the likely cumulative impact of a third refund order, against the remote possibility that its IXC customers suffered actual harm since July 1, 1998. Certainly, the fact that no IXC opposed Transmittal No. 11 is relevant. *See Virgin Island*, 989 F.2d at 1240. The history of Beehive's access filings and its proposed rate reductions also has to be reviewed to determine whether Beehive acted unreasonably in the development of its rates. *See Direct Case* at 1-19.

When weighing the equities, the Commission needs to make allowance for the fact that Beehive was misled as to the Commission's requirements by the staff's actions or inaction. *See Virgin Island*, 989 F.2d at 1240. The staff did not request Beehive's cost support before it permitted Beehive's \$0.47 per minute access rate to go into effect in July 1994. The rudimentary cost and demand study that supported Beehive's 1995 access filing was found probative by the Bureau over AT&T's JEI-based objection. *See 1995 Annual Access Filings of Non-Price Cap Carriers*, 10 FCC Rcd 12231, 12242 (Com. Car. Bur. 1995). Consequently, Beehive had no reason to suspect that the staff would question the detailed cost and demand study that supported its 1997 access filing. But beginning in August 1997 -- shortly after the alleged Commission agreement with AT&T -- the Bureau began finding merit to AT&T's claims. *See Beehive Tel. Co., Inc.*, 12 FCC Rcd 11695 (Com.

Car. Bur. 1997). Since then, the Bureau has suspended or summarily rejected every rate change filed by Beehive whether opposed or not. And the staff has been unwilling to work with Beehive informally to ensure its compliance with the Commission's tariff requirements.

Finally, the Commission should juxtapose Beehive's 1995 and 1998 cost and demand studies and explain how the 1995 study could be deemed accurate while the 1998 study is denounced as "unexplained and confusing." *Rate Prescription III* at 9.<sup>16/</sup> Unless it can reconcile the disparate treatment of Beehive's studies, the Commission must concede that Beehive's inability to comply with the Bureau's shifting standards was not unreasonable, but resulted from the lack of coherent Commission guidelines.

C. The Ratemaking Was Arbitrary

The Commission maintains that it has "the discretionary authority to prescribe rates using any methodology that results in just and reasonable rates." *Rate Prescription I*, 13 FCC Rcd at 1805. Regardless of the breadth of its discretion, the Commission cannot depart from its own rules, precedent and established procedures to arbitrarily select a new ratemaking methodology.

Section 61.39(b)(1)(ii) of the Rules sets out the ratemaking criteria applicable to Beehive's Transmittal No. 11, and it is the rule that the Bureau decided would apply in this investigation. Questioning whether Beehive met the "standard for cost support to qualify as a cost company" under section 61.39, *Designation Order* at 4, the Bureau required Beehive to show compliance with that rule by providing explanations of its cost support. *See id.* at 5. Because it is bound to adhere to its own rules, *e.g.*, *Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986), and its announced procedures, *Gardner v. FCC*, 530 F.2d 1086, 1090 (D.C. Cir. 1976), the Commission had to follow

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<sup>16/</sup> A copy of Beehive's 1995 filing is attached as Exhibit 3.

section 61.39 in ruling on Beehive's proposed rates. *See Southwestern Bell*, 28 F.3d at 169. If Beehive's rates are to be judged by the section 61.39(b) "standard for cost support," then the Commission is not free to depart from the methodology mandated by that rule to prescribe rates for Beehive that are not cost-based.

Even if it is free to select among ratemaking methodologies, the Commission cannot do so arbitrarily and it cannot "arbitrarily switch back and forth between methodologies." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 315 (1988). Yet, that is what the Commission has done here. Within the span of one year, the Commission employed different methodologies in *Rate Prescription I* and *Rate Prescription II*, and no methodology in *Rate Prescription III*.

In *Rate Prescription I*, the Commission prescribed rates based on total operating expenses ("TOE") equal to 25% of Beehive's TPIS. *See* 13 FCC Rcd at 11796. In *Rate Prescription II*, it calculated Beehive's rates using a TOE equal to 25% of the average unseparated TPIS of a sample of unidentified LECs allegedly with a "comparable" number of access lines as Beehive. *See* 13 FCC Rcd at 12285-86. Despite that both rate prescriptions were supposed to reflect Beehive's costs and demand for 1995 and 1996 (as required by 47 C.F.R. § 61.39(b)(1)(ii)), the two methodologies not surprisingly produced the inconsistent results shown below.

<i>Rate Prescription</i>	<i>I (\$)</i>	<i>II (\$)</i>
Total Operating Expenses	2,819,404	943,427
Interstate Revenue Requirement	2,148,808	824,965
Premium Local Switching Rate	0.010106	0.009607

The Commission's first two rate prescriptions were based in small part on Beehive's data. Beehive's TPIS and minutes of use ("MOUs") were used in *Rate Prescription I*. *See* 13 FCC Rcd

at 2749-50. In addition to relying on Beehive's MOUs in *Rate Prescription II*, the Commission used Beehive's reported interstate revenue requirement in order to "preserve" the way Beehive allocated its costs. 13 FCC Rcd at 12285. But when it prescribed NECA's July 1, 1998 transport rates in *Rate Prescription III*, the Commission abandoned any possible claim that it was prescribing cost-based rates. And it made no attempt to provide a reasonable explanation for its departure from cost-based ratemaking. *But see Competitive Telecomms. Ass'n v. FCC*, 87 F.3d 522, 532 (D.C. Cir. 1996).

Because of the Bureau's rejection of Beehive's revised switching rates, *Prescription III* produced "hybrid" rates that were developed using different methodologies and that bear no relationship to any "known and measurable" costs. *See Regulation of Small Telephone Companies*, 2 FCC Rcd 3811, 3813 (1987). Beehive's premium local switching rate prescribed in *Prescription II* is \$0.009607 per MOU. That rate was calculated using the average unseparated TPIS of a sample of LECs that purportedly served between 800 and 1,000 access lines in 1995 (31 LECs) and 1996 (24 LECs). *See Rate Prescription II*, 13 FCC Rcd at 12285, 12289. Beehive's other premium access rates are NECA's July 1, 1998 rates for tandem switched transport facility (\$0.000267), tandem switched transport termination (\$0.001316), and TIC (\$0.013737). *See Prescription III* at 9. Those rates presumably were based on NECA's projection of costs and estimates of revenue for the test year July 1, 1998 through June 30, 1999. *See* 47 C.F.R. § 61.38(b)(1); *Material to be Filed in Support of 1998 Annual Access Tariff Filings*, 13 FCC Rcd 6702, 6710 (Com. Car. Bur. 1998).

By its multi-methodology rate prescriptions, the Commission departed entirely from its own rules. Subset 3 carriers, such as Beehive, may make access tariff filings "pursuant to either [§61.38] or §61.39." 47 C.F.R. § 61.38(a)(emphasis added). Beehive's prescribed rates, however, do not comply with either rule. Beehive's prescribed local switching rates are based on estimated average

costs in 1995 and 1996, when section 61.39(b) of the Rules requires that Beehive's rates be based on its actual cost and demand for the calendar years 1996 and 1997. *See Rate Prescription III* at 2. Rates for Beehive's other service elements now are based on NECA's cost projections for the 12-month period beginning July 1, 1998. Thus, some of Beehive's prescribed rates are based on estimated, but outdated, historical costs. Others are based on projected industry costs. As a result, the prescribed set of rates do not reflect the actual costs of Beehive or any single industry segment.

Beehive's prescribed local switching rates were developed from a total interstate revenue requirement of \$824,963 calculated on the average TPIS of a small sample in 1995 and 1996. Its prescribed transport rates reflect a total revenue requirement of \$2,333,937, *see infra* Exhibit 4, and are based on NECA's 1998-99 cost estimates. The Commission's switching methodologies have produced a hodgepodge of prescribed access rates that bear no discernible relationship to either actual or industry average costs. Moreover, if one assumes that the NECA transport rates prescribed in *Rate Prescription III* are targeted to allow Beehive to meet its revenue requirement, then the switching rates prescribed in *Rate Prescription II* will virtually guarantee Beehive a revenue short fall and an economic loss.

By allowing Beehive to charge a TIC based on NECA's highest rate band, *see Rate Prescription III* at 9 n.51, the Commission acknowledged that Beehive is a higher than average cost carrier. *See also Rate Prescription I*, 13 FCC Rcd at 2742. Yet, Beehive's prescribed premium local switching rate (\$0.009607) is 38% lower than the lowest NECA premium switching rate (\$0.015431). Indeed, Beehive's prescribed premium local switching rate is lower than NECA's July 1998 non-premium switching rate bands 4 (\$0.010416) and 5 (\$0.011574). As it stands now, the Commission requires Beehive to charge lower access rates than the average cost carriers that participate in the

NECA tariff. For example, Beehive's prescribed per minute rate to AT&T for one mile of transport is \$0.024927, while the lowest July 1, 1998 rate to AT&T under the NECA tariff was \$0.025256.

The Commission must provide a "coherent and reasonable explanation" for its selection of ratemaking methodologies, *MCI Telecomms. Corp. v. FCC*, 675 F.2d 408, 413 (D.C. Cir. 1982), especially where, as here, the method does not reflect cost *See Competitive Telecomms. Ass'n v. FCC*, 87 F.3d 522, 529 (D.C. Cir. 1996). Such an explanation is imperative here, because Beehive can see no rhyme or reason to the Commission's shifting methodologies.

D. The Disallowances Were Unexplained

The Commission found against Beehive in *Rate Prescription II* in part because of its alleged "unexplained treatment of costs associated with JEI, and its unjustified legal expenses." 13 FCC Rcd at 12284. Beehive took pains in this case to explain its JEI expenses, *see* Direct Case at 12, 22, 25-28, and to justify its legal expenses. *See id.* 28-45. It also reasserted the First Amendment defense of its litigation costs that the Commission ignored in *Rate Prescription II*. *See id.* at 30-31.

Beehive's justification of its expenses and its constitutional claim went unnoticed in *Rate Prescription III*. The Commission announced without explanation that Beehive's costs to stimulate traffic were not an "allowable marketing expense." *Rate Prescription III* at 8. Such backhanded treatment of serious issues was inconsistent with reasoned decisionmaking. The Commission is obliged to explain its reasoning and it must respond to Beehive's constitutional defense. *See Meredith Corp. v. FCC*, 809 F.2d 863, 872 (D.C. Cir. 1987).

VIII. The Commission Should Explain The Need For Another Investigation

In July 1998, Beehive expressed its interest in working with the staff informally to insure its compliance with the Commission's requirements and "end the formal investigations that have been

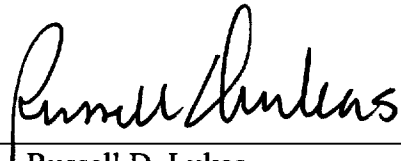
draining its limited resources.” Beehive Letter at 1. Without fulfilling its promise to respond to Beehive’s suggestion, the Bureau initiated this investigation (in which Beehive has incurred substantial legal and accounting expenses). Now, the Commission has “directed” the Bureau to institute a fourth investigation of Beehive – this time to investigate its Part 32 accounting, Part 64 cost allocation, and its separations “methodologies.” *Rate Prescription III* at 9.

Beehive asks the Commission to explain why the public interest is served by formal investigations rather than informal cooperation. The Commission also should explain the need to investigate Beehive’s Part 32 accounting, when six months ago it disclaimed that was prescribing or requiring Beehive “to comply with Part 32.” *Rate Prescription II*, 13 FCC Rcd at 12284 n.62.

For all the foregoing reasons, Beehive respectfully requests that the Commission overrule the *Suspension Order*, rescind *Rate Prescription III*, and accept Transmittal No. 11 for filing or, in the alternative, provide a reasoned explanation for doing otherwise.

Respectfully submitted,

BEEHIVE TELEPHONE COMPANY, INC.  
BEEHIVE TELEPHONE, INC. NEVADA

By   
\_\_\_\_\_  
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December 31, 1998





**BEEHIVE TELEPHONE COMPANY, INC**  
**Income Statement**  
**For Period From 01/01/98 to 11/30/98**

**REGULATED INCOME**

<b>OPERATING REVENUES</b>	
LOCAL NETWORK SERVICES	\$ 147,086.93
NETWORK ACCESS SERVICES	\$ 2,235,474.28
LONG DISTANCE SERVICES	\$ 122,710.24
MISCELLANEOUS REVENUES	\$ 16,220.08
UNCOLLECTIBLES	

<b>NET OPERATING REVENUES</b>	<u>\$ 2,521,491.53</u>
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<b>OPERATING EXPENSES</b>	
PLANT SPECIFIC OPERATIONS EXP	\$ 1,380,904.06
PLANT NONSPECIFIC OPER. EXP	\$ 451,256.91
CUSTOMER OPERATIONS EXPENSES	\$ 206,832.26
CORPORATE OPERATIONS EXPENSES	\$ 729,267.34

<b>TOTAL OPERATING EXPENSES</b>	<u>\$ 2,768,260.57</u>
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<b>NET REGULATED INCOME/(LOSS)</b>	<u>\$ (246,769.04)</u>
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<b>OPERATING TAXES</b>	
CORPORATE TAXES - FEDERAL	\$ -
CORPORATE TAXES - STATE	\$ -
PROPERTY TAXES	\$ 26,271.29
REGULATORY FEES AND TAXES	\$ 872.00

<b>TOTAL OPERATING TAXES</b>	<u>\$ 27,143.29</u>
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<b>NONOPERATING ITEMS</b>	
GAINS/LOSSES ON DISPOSITIONS	\$ -
INTEREST INCOME	\$ 54,907.47
OTHER NONOPERATING INC & EXP	\$ -
INTEREST EXPENSE	\$ (24,648.52)

<b>NET NONOPERATING ITEMS</b>	<u>\$ 30,258.95</u>
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<b>NET INCOME/(LOSS)</b>	<u>\$ (243,653.38)</u>
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**BEEHIVE TELEPHONE COMPANY, INC - NV**  
**Income Statement**  
**For Period From 01/01/98 to 11/30/98**

**REGULATED INCOME**

<b>OPERATING REVENUES</b>	
LOCAL NETWORK SERVICES	\$ 20,923.89
NETWORK ACCESS SERVICES	\$ 277,165.72
LONG DISTANCE SERVICES	\$ 90,938.68
MISCELLANEOUS REVENUES	\$ 11,807.24
UNCOLLECTIBLES	

<b>NET OPERATING REVENUES</b>	<b>\$ 400,835.53</b>
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<b>OPERATING EXPENSES</b>	
PLANT SPECIFIC OPERATIONS EXP	\$ 106,252.44
PLANT NONSPECIFIC OPER. EXP	\$ 74,296.11
CUSTOMER OPERATIONS EXPENSES	\$ 19,769.93
CORPORATE OPERATIONS EXPENSES	\$ 123,845.22
OPERATING TAXES	\$ (1,046.26)

<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 323,117.44</b>
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<b>NET REGULATED INCOME/(LOSS)</b>	<b>\$ 77,718.09</b>
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<b>NONOPERATING ITEMS</b>	
<b>GAINS/LOSSES ON DISPOSITIONS</b>	
INTEREST INCOME	\$ 6,738.03
OTHER NONOPERATING INC & EXP	\$ (8.49)
INTEREST EXPENSE	

<b>NET NONOPERATING ITEMS</b>	<b>\$ 6,729.54</b>
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<b>NET INCOME/(LOSS)</b>	<b>\$ 84,447.63</b>
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**DECLARATION OF ARTHUR W. BROTHERS**

I, ARTHUR W. BROTHERS, declare the following under penalty of perjury this 30th day of December, 1998:

1. I am an officer of Beehive Telephone Company, Inc. ("Beehive Utah") and Beehive Telephone, Inc. Nevada ("Beehive Nevada") (collectively "Beehive"), the petitioners in this case.

2. Beehive was established in 1965 to bring the first telephone service to remote areas of Utah and Nevada. Today, Beehive's subscribers are in tiny villages scattered throughout parts of nine Utah counties and two counties in Nevada. But for Beehive, most of its customers in the some 5,000 square miles it serves would not have telephone service, because Beehive serves areas that no other company is willing to serve.

3. Beehive's eight service areas are widely-dispersed over territory larger than several eastern states and comparable to an area stretching from Maine to Washington, D.C. The areas served by Beehive include some of the more formidable terrain in the United States. Of Beehive's 14 central office locations, nine are accessible by paved roads, four by dirt roads, and one by water only. Three central office locations do not have the benefit of a commercial power supply.

4. Beehive constructed more than 600 route miles of long distance facilities just to reach the center of the 16 villages it serves. In addition, it takes an average of more than one mile of line for Beehive to get the local loop to each customer from his or her associated central switching office.

5. The cost to Beehive for such rural telephone service has averaged \$10,000 per customer for Beehive's entire service area. Beehive currently has 645 residential customers, and it serves 330 business lines.

6. As a result of the access rates prescribed by the Commission, and the two refunds the FCC has ordered Beehive to make as of year to date November 30, 1998, Beehive has suffered a net loss of \$159,205.75 on a consolidated basis. This figure includes the amount the National Exchange Carrier Association, Inc. ("NECA") has asked Beehive to refund, \$131,191 in Common Carrier Line settlements it claims are due as a result of the Commission's decisions. December will undoubtedly show an additional loss, which our accounting department estimates in the range of \$14,110. In addition, on December 1, 1998, the Commission ordered Beehive to make a third refund. Although the exact amount of that refund is still being calculated by our accounting department, we estimate that the amount of the refund will be approximately \$805,440, bringing our total loss for December to approximately \$820,000 and our total loss for the year to approximately \$979,205.75 dollars.

7. The 1998 estimated net loss in excess of \$979,205.75 follows Beehive's consolidated net loss in 1997 of \$360,740. And based on the drastic reductions the FCC has ordered of in our access charges, including the most recently ordered reduction on December 1, 1998, as shown on the attached Projected Income Statement, we estimate our losses in 1999 will be approximately \$1.295 million. This should be contrasted with the 11.25 percent interstate rate of return allowed by the FCC and the 12 percent intrastate rate of return allowed by our state regulators. Obviously, in suffering substantial losses, we are not achieving any return on our investment.

8. Beehive's cash flow has suffered as a result of the FCC's decisions concerning the amount of its access charges. At this time Beehive has been unable to make timely payments on all its accounts payable, without even taking into effect the result of making the demanded refund to NECA. Were Beehive merely to maintain the status quo whereby all its accounts payable were not

being paid timely, and were it to make the refunds NECA has demanded, our accounting department calculates that our cash flow would decrease by \$23,994 per month.

9. Quite simply, pursuant to the rates the Commission has set, Beehive will lose money for the foreseeable future. Moreover, if Beehive is forced to pay the refunds the Commission has ordered, it is likely to be rendered insolvent. Certainly, Beehive's access to capital markets will be foreclosed, its ability to pay dividends will be impaired, and its general financial integrity will be damaged as a result of the latest Commission order setting unremunerative access charges and ordering refunds of previously collected access charges. With Beehive showing a history of substantial losses, the carrier will not be able to borrow funds when necessary at reasonable rates in order to improve telephone service to its subscribers. Moreover, it will have no surplus from which to pay dividends, rendering it unable to attract equity capital as a substitute for debt financing. Lastly, consistent losses caused by its high cost structure (resulting from its extremely rural service areas) and the unremunerative access charges the Commission has prescribed, will threaten the long-term financial health of the carrier. Thus, Commission relief from its most recent rate prescription and refund order is manifestly needed if Beehive is to continue to provide its subscribers reliable modern telephone service.

10. Historically, Beehive reinvests substantially all its available cash flow into improving the telephone service of the areas it serves. For example, Beehive spent some \$750,000 to install a 132 mile fiber optic toll line (the equivalent distance from Washington, DC to Philadelphia, PA) Park Valley, Utah, an area spread over a distance of some 25 miles, with but 45 families and 60 telephones. The fiber replaced 25 year old open wire which used electronic equipment no longer available. This combined with corrosion of the insulators caused by salt from the adjacent Great Salt

Lake desert had resulted in our inability to maintain long distance service over this cable. In addition, Beehive Nevada recently replaced a 75 mile open wire toll route in Nevada which had been in service for 67 years with fiber at a cost of \$699,849. This amounted to an investment of \$7,000 per subscriber served by this route just for this portion of the network needed for these subscribers to make long distance calls. These fiber facilities enable rural schools to employ video educational links, and to have the same facsimile and Internet access enjoyed by urban telephone subscribers. If Beehive is prohibited from earning any return on these investments by a combination of its high costs and the unremunerative access charges the Commission has prescribed, it will not be able to provide affordable service to its local subscribers who depend on it for service, assuming it can even stay in business. Already, Beehive has had to forego needed maintenance of its facilities because of the lack of funds. It will similarly have to forego its program to improve and modernize its facilities for this same reason. Ultimately, unless the Commission grants Beehive relief, service to its subscribers will deteriorate.

11. I am familiar with the facts alleged in the accompanying Petition for Reconsideration. The facts stated herein and the foregoing facts stated in this declaration are true and correct of my own personal knowledge and belief, and are proffered in good faith.

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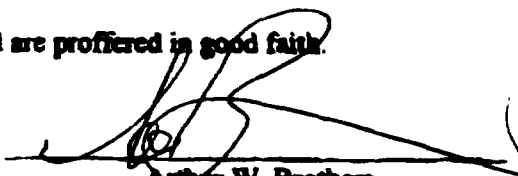
Arthur W. Brothers

that POLE LINE  
~~POLE LINE~~

- 4 -

Lake desert had resulted in our inability to maintain long distance service over ~~this cable~~. In addition, Beehive Nevada recently replaced a 75 mile open wire toll route in Nevada which had been in service for 67 years with fiber at a cost of \$699,849. This amounted to an investment of \$7,000 per subscriber served by this route just for this portion of the network needed for these subscribers to make long distance calls. These fiber facilities enable rural schools to employ video educational links, and to have the same facsimile and Internet access enjoyed by urban telephone subscribers. If Beehive is prohibited from earning any return on these investments by a combination of its high costs and the unremunerative access charges the Commission has prescribed, it will not be able to provide affordable service to its local subscribers who depend on it for service, assuming it can even stay in business. Already, Beehive has had to forego needed maintenance of its facilities because of the lack of funds. It will similarly have to forego its program to improve and modernize its facilities for this same reason. Ultimately, unless the Commission grants Beehive relief, service to its subscribers will deteriorate.

11. I am familiar with the facts alleged in the accompanying Petition for Reconsideration. The facts stated herein and the foregoing facts stated in this declaration are true and correct of my own personal knowledge and belief, and are proffered in good faith.

  
Arthur W. Brothers



**THE BEEHIVE TELEPHONE COMPANIES**  
**Projected Income Statement**  
**For Period From 01/01/99 to 12/31/99**

<b>REGULATED INCOME</b>	<b>Utah</b>	<b>Nevada</b>	<b>Total</b>
<b>OPERATING REVENUES</b>			
LOCAL NETWORK SERVICES	\$ 152,118.00	\$ 22,828.00	\$ 174,942.00
NETWORK ACCESS SERVICES	\$ 1,403,654.00	\$ 166,300.00	\$ 1,569,954.00
LONG DISTANCE SERVICES	\$ 122,000.00	\$ 64,940.00	\$ 186,940.00
MISCELLANEOUS REVENUES	\$ 17,695.00	\$ 12,881.00	\$ 30,576.00
<b>NET OPERATING REVENUES</b>	<b>\$ 1,895,465.00</b>	<b>\$ 266,947.00</b>	<b>\$ 1,962,412.00</b>
<b>OPERATING EXPENSES</b>			
PLANT SPECIFIC OPERATIONS EXP	\$ 1,551,545.00	\$ 115,912.00	\$ 1,667,457.00
PLANT NONSPECIFIC OPER. EXP	\$ 507,049.00	\$ 81,050.00	\$ 588,099.00
CUSTOMER OPERATIONS EXPENSES	\$ 232,404.00	\$ 21,567.00	\$ 253,971.00
CORPORATE OPERATIONS EXPENSES	\$ 614,370.00	\$ 135,104.00	\$ 749,474.00
<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 2,905,368.00</b>	<b>\$ 353,633.00</b>	<b>\$ 3,259,001.00</b>
<b>NET REGULATED INCOME/(LOSS)</b>	<b>\$ (1,209,903.00)</b>	<b>\$ (86,686.00)</b>	<b>\$ (1,296,589.00)</b>
<b>OPERATING TAXES</b>			
CORPORATE TAXES - FEDERAL	\$ -	\$ -	\$ -
CORPORATE TAXES - STATE	\$ -	\$ -	\$ -
PROPERTY TAXES	\$ 27,300.00	\$ 4,000.00	\$ 31,300.00
REGULATORY FEES AND TAXES	\$ 1,000.00	\$ 200.00	\$ 1,200.00
<b>TOTAL OPERATING TAXES</b>	<b>\$ 28,300.00</b>	<b>\$ 4,200.00</b>	<b>\$ 32,500.00</b>
<b>NONOPERATING ITEMS</b>			
INTEREST INCOME	\$ 48,000.00	\$ 2,400.00	\$ 50,400.00
INTEREST EXPENSE	\$ (15,600.00)	\$ -	\$ (15,600.00)
<b>NET NONOPERATING ITEMS</b>	<b>\$ 32,400.00</b>	<b>\$ 2,400.00</b>	<b>\$ 34,800.00</b>
<b>NET INCOME/(LOSS)</b>	<b>\$ (1,205,803.00)</b>	<b>\$ (88,486.00)</b>	<b>\$ (1,294,289.00)</b>



BEEHIVE TELEPHONE COMPANY, INC.  
CORPORATE OFFICE  
3335 SOUTH 900 EAST, SUITE 190  
SALT LAKE CITY, UTAH 84106  
TELEPHONE: 801 484-9683  
FACSIMILE: 801 484-9627

June 2, 1995

Transmittal No. 3

Secretary  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M. Street N.W.  
Washington, DC 20554

Attn: Common Carrier Bureau

Dear Sir or Madam:

The accompanying tariff material issued on behalf of Beehive Telephone Companies ("Beehive"), bearing Tariff F.C.C. No. 1 (Access Service) is sent to you for filing in compliance with the Communications Act of 1934, as amended.

This filing is made on not less than twenty-eight (28) days notice under Special Permission No. 95-667. This filing contains tariff material to become effective July 1, 1995, and consists of tariff pages as indicated on the following checksheet:

Tariff F.C.C. No. 1      2nd Revised Page 1

With this transmittal, Beehive submits its 1995 Annual Access Tariff Filing. Beehive files under Part 61.39 of the Commission's rules for small telephone companies. Beehive is a Tier 2B carrier servicing an area with less than 50,000 access lines. Rates are based on 1994 cost and demand data.

In accordance with the Commission's filing requirements, a check payable to the Federal Communications Commission in the amount of \$565.00 has been attached to F.C.C. form 159 along with the original of this transmittal letter and sent to Mellon Bank in Pittsburgh, Pennsylvania.

Beehive Transmittal No. 3  
Secretary  
F.C.C.  
June 2, 1995  
Page Two

Please acknowledge receipt of this transmittal on the duplicate letter of transmittal attached for this purpose. All correspondence and inquiries concerning this transmittal should be addressed to Paula Wagner at P.O. Box 25969, Colorado Springs, CO. 80936, or phone at (719) 594-5838.

**BEEHIVE TELEPHONE COMPANIES**

By:   
Arthur W. Brothers, Jr.  
Beehive Telephone Companies

cc: Chief, Tariff Review Branch (w/attachments)  
Frank Hopwood, Tariff Review (w/attachments)

Enclosures  
Duplicate Letter  
Check Sheets  
Tariff Pages  
Description and Justification  
Cost Support  
Tariff Review Plan

Beehive Telephone Company ("Beehive") makes filing under Special Permission No. 95-667, which waives Parts 61.58 and 69.3(a) of the Commission's rules. This waiver allows Beehive to make its 1995 Annual Access Tariff Filing on less than statutory notice.

On May 25, 1995, a legally authorized change of Beehive's management took place. As a result of the magnitude and complexity of the transition process caused by this change, Beehive's 1995 Annual Access Tariff filing has been significantly delayed. Though significant transitional matters are still being resolved, current management within the company, who have been in place since April 24, 1995, are moving expeditiously to comply with the Commission Rules. Accordingly, Beehive expects to be able to make its annual filing on June 2, 1995.

For these reasons, Beehive seeks a waiver of 61.58 to allow it to file a tariff on less than statutory notice. Also, waivers of 69.3(a) and 69.3(f) are necessary to allow Beehive to make an annual access tariff filing pursuant to Part 61.39 on less than 90 days' notice.

Beehive files these rates under Part 61.39 of the Commission's rules, and submits full cost support upon request of the Commission. These rates filed herein are based on 1994 cost and demand data, as the rates currently in place are based on 1993 cost and demand data.

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*1. 1994 Cost of Service Studies*

Beehive operated in the states of Utah and Nevada. Most of Beehive's service area and end user population is concentrated in Utah.

Because of the very limited time allotted for this filing, the 1994 cost of service studies used in this filing are estimates based on the best and most accurate materials available at this time. These studies are based on the 1993 cost of service studies, and are updated with 1994 unaudited financials and traffic factors.

Beehive is currently undergoing a comprehensive audit by an impartial outside party. Upon completion of this audit, GVNW plans to update the 1994 studies with information from the audit. While this audit will not be completed until well into 1996, sufficient information should be available by the first quarter of 1996 to determine whether the audited 1994 financials differ significantly from those used in this filing. If they are significantly different, Beehive plans to make a midcourse correction or participate in the optional 1996 Annual Access Tariff filing.

*I. Cost of Service Study (Cont'd)*

The 1994 traffic factors as well as the basic underlying studies used in the present 1994 cost of service studies were developed by the consulting firm used by Beehive's previous management. Because of the extremely short time frame allotted this filing, these factors (rather than factors developed by GVNW) are used in the cost of service studies that produce the revenue requirements used to develop these rates. GVNW plans to perform current in house traffic studies to validate these factors from this point forward. When final 1994 financials are available and GVNW may complete a cost of service study based on the most current information, GVNW will represent the full accuracy of the 1994 cost of service study for Beehive.

*II. Rate Development*

**A. Background**

The rates are developed based on 1994 cost and demand data. Revenue requirements are produced from the 1994 cost of service studies for Utah and Nevada divided by the 1994 demand for Utah and Nevada.

## ***II. Rate Development (Cont'd)***

### **B. Demand**

Beehive experienced a substantial increase in demand in the fourth quarter of 1994. The rates developed with this filing reflect this increase in demand. Although revenue requirements actually increased from 1993 levels, the demand increased dramatically, resulting in a 70% overall decrease in switched access rates.

As illustrated on Worksheet #1, the demand used for this filing is equal to 1994's demand, according to the Commission's rules.

This demand, as shown on Worksheet #2, is then divided into the revenue requirements for switched access service to produce rates for these services.

### **C. Local Transport Termination and Facility Rates**

Worksheet #2, Page Two shows the development of the local transport termination and facility rates using the local transport basic revenue requirement. Ratios based on the percentage of local transport revenue requirement recovered by each of these rates currently are applied to the overall local transport rate developed. The local transport facility rate was then divided by the average length of haul for local transport routes, deriving the per mile rate.



*II. Rate Development (Cont'd)*

**D. Other Access Rates**

Beehive does not currently bill for 800 data base queries, and does not currently have demand for special access service. Nonrecurring charges do not apply for new services.

*III. Tariff Review Plan*

The tariff review plan submitted with this filing is usually submitted for companies filing rates under Part 61.38 rules. Therefore, the tariff review plan has numbers input areas for the prospective period.

Beehive uses January 1, 1994 through January 2, 1994 as its historical year as well as its first and second prospective year. 1993 is the previous historical year.

Unfortunately, revenue data for 1993 and 1994 is not available at this time. We have derived this data from NECA's latest views and the cost study figures.

As more data becomes available, we will update the tariff review plan.

One tariff review plan is submitted for both Utah and Nevada, although the cost studies for these states are submitted separately.

1995 ANNUAL INTERSTATE ACCESS TARIFF FILING  
SWITCHED AND SPECIAL ACCESS RATE SUMMARY

WORKSHEET #2  
PAGE ONE OF THREE  
05/31/95  
08:04 PM

COMPANY: BEEHIVE TELEPHONE COMPANIES

EFFECT DATE: 7-1-95

TOTAL SWITCHED ACCESS REVENUE REQUIREMENT \$670,331

SWITCHED ACCESS BY RATE ELEMENT	ANNUAL DEMAND	ANNUAL REVENUE REQUIREMENT	PRICED RATE PER MINUTE	NON-PRICED RATE PER MINUTE
LOCAL SWITCHING (LS1 RATE + LS2 RATE)	4,934,440	171,348	0.0348	0.0156
800 DATABASE QUERY	0	0	NA	
LOCAL TRANSPORT	4,934,440	498,753	0.1011	0.0456
DIRECTORY ASSISTANCE SURCHG	49,344	0	0.0000 PER 100 MIN	0.0000 PER 100 MIN
REVENUE REQUIREMENT TOTAL		<u>\$670,331</u>		

TOTAL SPECIAL ACCESS REVENUE REQUIREMENT \$0  
SEE WORKSHEET #2 PAGE THREE

SPECIAL ACCESS RATE ELEMENT	MONTHLY DEMAND	MONTHLY RATE	ANNUAL REVENUE REQUIREMENT	ANNUAL REVENUE REQUIREMENT
CHANNEL TERMINATION:				
WIRE	0	NA	0	0
WIRE	0	NA	0	0
PROGRAM AUDIO	0	NA	0	0
DIGITAL DATA	0	NA	0	0
HIGH CAPACITY	0	NA	0	0
CHANNEL MILEAGE:				
2W & 4W FLAT	0	NA	0	0
2W & 4W PER MILE	0	NA	0	0
PROGRAM AUDIO FLAT	0	NA	0	0
PROGRAM AUDIO PER MILE	0	NA	0	0
DIGITAL DATA FLAT	0	NA	0	0
DIGITAL DATA PER MILE	0	NA	0	0
HI CAP FLAT	0	NA	0	0
HI CAP PER MILE	0	NA	0	0
REVENUE TOTAL				<u>\$0</u>

ENTAR:FMASTERHISNOLTR

# SWITCHED ACCESS RATE DEVELOPMENT

WORKSHEET #2  
PAGE TWO OF THREE  
05/31/85  
05:04 PM

COMPANY: BEEHIVE TELEPHONE COMPANIES

EFFECT DATE: 7-1-85

## REVENUE REQUIREMENT SUMMARY

### COMMON LINE ELEMENTS

REGULAR PAY TELEPHONE	2,863
LIMITED PAY TELEPHONE	0
INFORMATION ORIG/TERM EQUIPMENT LOOP	0
	<u>186,462</u>
TOTAL COMMON LINE	<u>\$186,462</u>

### TRAFFIC SENSITIVE ELEMENTS

LOCAL SWITCHING	171,678
800 DATABASE QUERY	0
LOCAL TRANSPORT INFORMATION	488,753
	<u>0</u>
TOTAL TRAFFIC SENSITIVE	<u>\$670,331</u>

END USER COMMON LINE LOOP 186,462

### MULTI-LINE BUSINESS SLC RATE DEVELOPMENT

COL LOOP REVENUE REQUIREMENT	\$186,462
LOCAL EXCHANGE SUBSCRIBER LINES	<u>612</u>
REVENUE REQUIREMENT PER LOOP	\$304.68
MONTHLY RATE	<u>\$25.39</u>

### 800 DATABASE QUERY CHARGE (1)

DATA BASE QUERY	0
TRANSPORT	<u>0</u>
TOTAL QUERY CHARGE	0
ESTIMATED BASIC QUERIES	<u>0</u>
TOTAL 800 QUERY REVENUE	<u>\$0.00</u>

## TRAFFIC SENSITIVE RATE DEVELOPMENT

### LOCAL SWITCHING

TOTAL SWITCHING REV REQ	\$171,678
LESS 800 QUERY REVENUE (1)	<u>0</u>
NET REVENUE REQUIREMENT	\$171,678
ACCESS MINUTE PROJECTION	<u>4,834,449</u>

LOCAL SWITCHING RATE PER ACCESS MINUTE \$0.0348

### LOCAL TRANSPORT

REVENUE REQUIREMENT	\$488,753
ACCESS MINUTE PROJECTION	<u>4,834,449</u>

LOCAL TRANSPORT RATE PER ACCESS MINUTE \$0.1011

### DIRECTORY ASSISTANCE SURCHARGE

REVENUE REQUIREMENT	80
ACCESS MINUTES DIVIDED BY 100	<u>48,344</u>
D.A. SURCHARGE RATE PER 100 ACCESS MINUTES	<u>\$0.0009</u>

### LOCAL TRANSPORT TERMINATION

LOCAL TRANSPORT RATE	0.1011
TERMINATION RATIO FROM 1984 FILING	<u>47.16%</u>
TRANSPORT TERMINATION RATE	<u>\$0.0477</u>

### LOCAL TRANSPORT FACILITY

LOCAL TRANSPORT RATE	0.1011
TERMINATION RATIO FROM 1984 FILING	<u>62.84%</u>
BASE RATE TOTAL	\$0.0634
AVERAGE MILEAGE CALCULATION	42
TRANSPORT FACILITY RATE	<u>\$0.00137</u>

J: TARIFMASTER\HISNOLTR

1985 ANNUAL INTERSTATE ACCESS TARIFF FILING  
SPECIAL ACCESS RATE DEVELOPMENT

WORKSHEET #2  
PAGE THREE OF THREE  
05/01/85  
08:04 PM

COMPANY: BEEHIVE TELEPHONE COMPANIES

EFFECT DATE: 7-1-85

SPECIAL ACCESS REVENUE REQUIREMENT SUMMARY

LOOP	\$0
CHANNEL	0
<b>TOTAL</b>	<b>\$0</b>

CHANNEL MILEAGE TERMINATION RATE DEVELOPMENT

ANNUAL LOOP REVENUE REQUIREMENT \$0

DEMAND PROJECTION:

TWO WIRE CHANNEL TERM	0
FOUR WIRE CHANNEL TERM	0
PROGRAM AUDIO	0
DIGITAL DATA	0
HIGH CAPACITY	0

RATES:

TWO-WIRE	NA
FOUR-WIRE	NA
PROGRAM AUDIO	NA
DIGITAL DATA	NA
HIGH CAPACITY	NA

CHANNEL MILEAGE TERMINATION RATE DEVELOPMENT

CHANNEL REVENUE REQUIREMENT \$0

DEMAND PROJECTION

ANNUAL DEMAND\* 0  
AIRLINE MILES\* 0

FLAT RATE PER MONTH-2W & 4W	NA
FLAT RATE PER MONTH-PRGRM AUDIO	NA
FLAT RATE PER MONTH-DIG DATA	NA
FLAT RATE PER MONTH-HI CAP	NA

ANNUAL REVENUE - FLAT RATE \$0

CHANNEL MILEAGE FACILITY RATE DEVELOPMENT

RESIDUAL REVENUE REQUIREMENT \$0

MONTHLY PER MILE RATE-2W & 4W NA

MONTHLY PER MILE RATE-PRGRM AUDIO NA

MONTHLY PER MILE RATE-DIG DATA NA

MONTHLY PER MILE RATE-HI CAP NA

\*TOTAL EQUIV. TO 2 WIRE DEMAND OR MILES

COMPANY: BEEHIVE TELEPHONE COMPANIES

EFFECT DATE: 7-1-96

SWITCHED ACCESS ELEMENTS	PRESENT RATES	PROPOSED RATES	PERCENTAGE INCREASE
LOCAL TRANSPORT - PREMIUM PER MINUTE	\$0.31170	\$0.10110	-67.58%
Termination Facility	\$0.14700 \$0.00358	\$0.04767 \$0.00127	-67.57% -91.48%
LOCAL SWITCHING - LS 2 PREMIUM PER MIN	\$0.15400	\$0.03480	-77.40%
DIRECTORY ASSISTANCE SURCHG - PER 100 MIN	\$0.03000	\$0.00000	-100.00%
TOTAL PER ACCESS MINUTE - PREMIUM	\$0.48800	\$0.18600	-70.84%
NONRECURRING	NA	NA	0.00%
SPECIAL ACCESS ELEMENTS			
CHANNEL TERMINATION - TWO-WIRE	NA	NA	0.00%
CHANNEL TERMINATION FOUR-WIRE	NA	NA	0.00%
CHANNEL MILEAGE - TERM	NA	NA	0.00%
CHANNEL MILEAGE - MILEAGE	NA	NA	0.00%
DDRAM AUDIO CHANNEL TERM	NA	NA	0.00%
PROGRAM AUDIO CHANNEL MILEAGE - TERM	NA	NA	0.00%
PROGRAM AUDIO CHANNEL MILEAGE - PER MILE	NA	NA	0.00%
DIGITAL DATA CHANNEL TERMINATION	NA	NA	0.00%
DIGITAL DATA CHANNEL MILEAGE - TERM	NA	NA	0.00%
DIGITAL DATA CHANNEL MILEAGE - PER MILE	NA	NA	0.00%
HIGH CAPACITY CHANNEL TERMINATION	NA	NA	0.00%
HIGH CAPACITY CHANNEL MILEAGE - TERM	NA	NA	0.00%
HIGH CAPACITY CHANNEL MILEAGE - PER MILE	NA	NA	0.00%
OTHER RATES DEVELOPED			
MULTI-LINE BUSINESS RATE	\$0.00	\$0.00	0.00%

J. J. ARFMASTER/HISNOLTR

1995 ANNUAL INTERSTATE ACCESS TARIFF FILING  
INTERSTATE ACCESS MINUTES FOR DEMAND

WORKSHEET #1  
PAGE ONE OF ONE

EFF DATE: 7-1-95

MONTH	A PREMIUM LS1 & LS2 LOC SW	B NON-PREM LOCAL SWITCHING	C TOTAL EQUATED SW MOUF	D PREMIUM LOCAL TRAMP	E NON-PREM LOCAL TRAMP	F TOTAL LOCAL TRAMP	G TOTAL MINUTES QUERIES
JANUARY	49,188	0	49,188	49,188	0	49,188	0
FEBRUARY	82,080	0	82,080	82,080	0	82,080	0
MARCH	66,324	0	66,324	66,324	0	66,324	0
APRIL	69,700	0	69,700	69,700	0	69,700	0
MAY	74,999	0	74,999	74,999	0	74,999	0
JUNE	88,443	0	88,443	88,443	0	88,443	0
JULY	88,944	0	88,944	88,944	0	88,944	0
AUGUST	70,384	0	70,384	70,384	0	70,384	0
SEPTEMBER	80,817	0	80,817	80,817	0	80,817	0
OCTOBER	1,089,016	0	1,089,016	1,089,016	0	1,089,016	0
NOVEMBER	2,088,218	0	2,088,218	2,088,218	0	2,088,218	0
DECEMBER	1,147,868	0	1,147,868	1,147,868	0	1,147,868	0
TWELVE MONTH SUBTOTAL	4,934,449		4,934,449			4,934,449	0

USAGE FOR CALCULATION OF RATES ON WORKSHEET #2

TOTAL 1994	4,934,449	4,934,449	0
TOTAL MINUTES/QUERIES	4,934,449	4,934,449	0
HISTORICAL AVERAGE MINUTES/QUERIES	4,934,449	4,934,449	0

J. TAKIF MASTER/HISNOLTR

\*\* TOTAL PAGE.019 \*\*



**BEEHIVE'S FCC-PRESCRIBED  
INTERSTATE REVENUE REQUIREMENT**

	Prescribed Rate (\$)	Premium MOUs	Composite Mileage	Revenue Requirement (\$)
Local Switching	0.009607	53,382,366		512,844
Transport Facility	0.000267	53,382,366	71.39	1,017,528
Transport Termination	0.001316	53,382,366		70,251
TIC	0.013737	53,382,366		733,314
<b>Total</b>				<b><u>2,333,937</u></b>



**CERTIFICATE OF SERVICE**

I, Paula L. Rogers, a secretary in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 31st day of December, 1998, had a copy of the foregoing PETITION FOR RECONSIDERATION hand-delivered to the following:

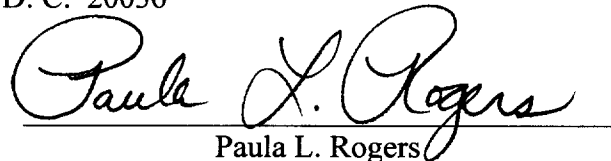
Larry Strickling, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

Jane E. Jackson, Chief  
Competitive Pricing Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 518  
Washington, D.C. 20554

Jon Stover, Esquire  
Competitive Pricing Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 528C  
Washington, D. C. 20554

\*Mark C. Rosenblum, Esquire  
Peter H. Jacoby, Esquire  
Seth S. Gross, Esquire  
AT&T Corp.  
295 North Maple Avenue, Room 3252F3  
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Paula L. Rogers

\*via facsimile and U.S. Mail